

## Towards elimination of cetacean bycatch in European waters

### WDC, EIA & HSI comments on the draft PECH Committee report & amendments on the proposed Regulation on the conservation of fishery resources and the protection of marine ecosystems through technical measures

Whale and Dolphin Conservation (WDC), Environmental Investigation Agency (EIA) and Humane Society International (HSI) hereby respectfully present our comments on the PECH rapporteur's draft report and the amendments tabled with respect to the European Commission's proposal for a *Regulation on the conservation of fishery resources and the protection of marine ecosystems through technical measures (2016/0074)*.

For decades, cetacean bycatch has been a major conservation and welfare concern in Europe with high numbers of harbour porpoises, dolphins and whales continuing to die each year. Despite binding legal requirements to monitor and reduce bycatch, cetacean bycatch monitoring has been insufficient in most fisheries and areas and has thus often impeded the application of effective mitigation.

The current EU cetacean bycatch legislation (Council Regulation (EC) No 812/2004) has been found to have significant weaknesses and is being repealed and incorporated into the proposed technical measures regulation (2016/074). This proposed regulation provides the opportunity to improve monitoring and mitigation requirements and to help safeguard European cetacean populations.

WDC, EIA and HSI are deeply disappointed that rather than providing the critically needed strengthening of the Commission's proposal, many of the proposed amendments in the Rapporteur's report would significantly weaken both the provisions of the existing cetacean bycatch legislation and the Commission's proposal. A number of amendments have, however, been tabled by members of the PECH Committee that would instead strengthen the proposed legislation and ensure a higher level of protection for cetaceans and other marine species against bycatch.

This paper outlines the key amendments relating to the issue of cetacean bycatch that we would urge PECH Committee members to support or reject.<sup>1</sup>

### The following amendments should be supported

#### Eliminating sensitive species bycatch

*Amendments 325/326, 329, 344/345/346/349, 254, 270/271/272, 297, 254, 297/298/299*

These amendments explicitly support the elimination of sensitive species bycatch, including for marine mammals, seabirds and turtles.

*It is important to maintain strong provisions regarding eliminating bycatch. Language should be in line with the strict protection afforded to cetaceans under the Habitats Directive as well as the aim of the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Sea (ASCOBANS) to minimise and ultimately reduce bycatch towards zero.*

#### Addressing welfare impacts on sensitive species

*Amendments 251, 329, 422, 543*

These amendments support the consideration of welfare impacts on sensitive species that result from fishing activities.

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<sup>1</sup> It is understood that compromise amendments are presently being negotiated. When made available, we shall also deliver our voting recommendations on these where relevant to the issue of cetacean bycatch.

*Entanglement in fishing gear is the most significant threat to wild cetacean welfare<sup>i</sup> and is a significant cause of morbidity and mortality.*

### **Adequate cetacean bycatch monitoring & mitigation measures**

*Amendments 358/359, 452/453, 459/460, 462, 467, 547, 607, 635, 668, 677, 699, 708*

These amendments will require reporting of bycatch (**AM452/453/459/460, AM607, AM635, AM668, AM677, AM699, AM708**), and enable or require assessment of bycatch monitoring and mitigation measures put in place (**AM358, AM547, AM467**).

*Member States need to monitor bycatch rates and assess the mitigation measures used and their effectiveness, in order that mitigation can be applied and amended according to its efficacy in reducing bycatch. Many of these monitoring requirements were included in Regulation 812/2004 that will be repealed.*

### **Reducing incidental catches of seals**

*Amendments 605, 633, 662, 675, 696 706*

These amendments expand bycatch measures from cetaceans to all marine mammals, including seals.

*Bycatch is a significant issue for seals. Seals are protected under the Habitats Directive and should also be covered by appropriate mitigation measures.*

### **Bycatch measures for a more appropriate range of fishing gear types**

*Amendments 606, 634, 666, 676, 697, 707, 248/252*

These amendments expand bycatch measures to a more appropriate range of fishing gear types.

*The length of the vessel is not the primary consideration when understanding bycatch, it is the fishing gear in use that is important. A significant amount of the European fleet is comprised of vessels that are smaller than 12 metres. The listed types of fisheries are known to have a high incidence of bycatch and are therefore a priority for mitigation technologies<sup>ii</sup>.*

### **Spatial management to reduce and eliminate bycatch**

*Amendments 356, 446, 449, 468, 289/290*

These amendments support assessment of fisheries impacts in Natura 2000 sites (**AM356, 449, 468**), inclusion of prohibition of static nets at certain depths in Mediterranean waters as elsewhere (**AM446**) and real-time closures for sensitive species (**AM289/290**).

*Spatial measures such as protected areas and real-time closures are an important mitigation tool. Application of spatial measures is consistent with the requirements of Article 3 of the Habitats Directive and Article 7 2(c) of the Common Fisheries Policy.*

### **Reducing incidental bycatch in the Outermost Regions**

*Amendment 711*

This amendment introduces measures for monitoring and mitigation of marine mammal bycatch.

*Mitigation measures for sensitive species were missing in this region. Baseline measures for incidental catches of marine mammals are needed, especially to ensure regionalisation processes within this proposal can be applied. Measures applied need to be monitored and amended according to their efficacy in reducing bycatch. Annual reporting to the Commission allows the data from all Member States to be analysed annually to identify cumulative levels of bycatch from cetacean populations, rather than by individual Member States.*

### **Sensitive species protection**

*Amendments 383, 469, 544, 545, 548, 569, 301*

These amendments strengthen the definition of 'sensitive species' (**AM383**) and empower the Commission to adopt delegated acts to provide protection where there is evidence of a serious threat to a species' conservation (**AM569**) or unexpected changes in bycatch of sensitive species (**AM301**). They also ensure that nature

conservation measures are applied at a population level (**AM548**), and that protection is provided from deliberate disturbance, deterioration or destruction of sensitive habitats, breeding sites or resting places of sensitive species (AM469), as required by the Birds and Habitats Directive.

*The Commission's draft proposal implied that all examples listed (e.g. habitat distribution, population size, and population condition) were needed to apply in order for a species to be considered sensitive. However, it only takes one of these i.e. decline population of population size, for the species' status to become unfavourable or in some cases at risk of extinction.*

**The adoption of the aforementioned amendments would help significantly improve bycatch monitoring, assessment and the application of mitigation in order to progressively reduce, and where possible eliminate, bycatch of dolphins, porpoises and whales in fishing gear in European waters.**

## **The following amendments should be rejected**

### **Removing protection measures from the Baltic**

*Amendments 66, 440, 441*

These amendments, to delete the Commission language, would remove the prohibition to carry or deploy driftnet gear in the Baltic Sea (**AM66, 440**) or provide exemptions for small scale coastal fisheries within 4 nautical miles of the measured from the baselines (**AM441**).

*Harbour porpoises are Critically Endangered in the Baltic Sea, due largely to historical removals but with the current major threat being bycatch in fishing gear. The existing driftnet ban was introduced to protect the local harbour porpoise population<sup>iii</sup> (also see Table 1, below). Bycatch is already higher than the critically endangered population, that is distinct from other European porpoises, can withstand. Allowing driftnets to be reintroduced into the Baltic might well be the last nail in the coffin for this population. Current low numbers of porpoises being caught in nets reflect the fact that there are few individuals remaining in the population, not the lack of impact on the population due to bycatch.*

### **Removing bycatch measures from South Western Waters**

*Amendments 198, 556, 663/667, 664/665, 705*

These amendments, to delete the Commission language, would remove all existing cetacean bycatch monitoring and mitigation measures in South Western waters (**AM198**), remove measures in ICES sub-area VIII (**AM663/667**), remove measures in ICES sub-areas VIII and IX (**AM705**) and remove the requirement for the use of Acoustic Deterrent Devices in ICES sub-area IX (**AM556**) and in ICES sub-areas VIII and IXa (**AM664/AM665**).

*There are high densities of cetaceans in South Western waters and robust evidence of high bycatch rates, including in the north-west Iberian Peninsula, such as in Andalucía and Galicia (see Table 1, below). There is particular concern for harbour porpoises, bottlenose and common dolphins, whose populations in South Western waters are likely suffering unsustainable population level effects due to bycatch.*

### **Removing bycatch measures from the Mediterranean**

*Amendment 695*

This amendment would remove all requirements for monitoring and mitigation of cetacean bycatch in the Mediterranean.

*All Mediterranean cetacean populations are critically endangered, endangered, vulnerable or data deficient and there is evidence of high levels of bycatch in this region (see Table 1, below). Removing measures would accelerate population declines.*

## **Weakened language**

*Amendments 5, 6, 22, 25, 27, 35*

These amendments would weaken obligations regarding eliminating cetacean bycatch. For example, Commission language to ‘ensure that bycatches of marine species ... that result from fishing are minimised and where possible eliminated’ is more robust than the PECH rapporteur’s language to ‘contribute to minimising incidental catches of sensitive marine species’ (**Recital 8 (AM5), Article 3 (AM22)**).

Both the Commission language and the PECH rapporteur’s language under **Article 3 (AM22)** should be strengthened and aligned with the protection provided to these species under Directives 92/43/EEC and 79/409/EEC and regional agreements such as ASCOBANS, with the objective being to minimise, and where possible eliminate, bycatches of sensitive marine species. Information on conservation status is often lacking; therefore conditioning mitigation action on ensuring that catches do not represent a threat to conservation status sets a low bar for action and would be contrary to the strict protection afforded to cetacean species under the Habitats Directive.

Similarly, under **Article 4 (AM27)** there should be no reference to “restriction of incidental catches of marine mammals, marine reptiles, seabirds and other non-commercially exploited species to the levels provided for in current Union regulations and international agreements ratified by the Union”.

There are no targets (**Recital 9, AM6**) or levels (**Article 4, AM25, AM 343**) defined under Union or international legislation for species such as cetaceans, making such a reference inaccurate. Moreover, to only limit catches to certain levels would undermine the strict protection these species are afforded under the Habitats Directive. Rather the language should be aligned with the language used elsewhere in the Commission’s proposal, with the objective being to minimise and progressively eliminate bycatch.

The Commission’s proposal definition of ‘sensitive habitat’ includes habitats of species listed under Annex II of the Habitats Directive (which includes cetaceans), recognising that species are dependent on particular habitats for important biological activities, including feeding and resting. Bycatch levels may be higher in favoured habitats, where these overlap with fishing grounds. The PECH report deletes the inclusion of these habitats under **Article 6.1(6) (AM35)** and thus the vital protection afforded to habitats of species listed under Annex II of the Habitats Directive Annex II.

*Language used in the PECH draft report significantly weakens the Commission’s proposal, which should also be strengthened to align with the protection provided under the Birds and Habitats Directives. This would weaken Member States’ obligations to monitor and mitigation cetacean bycatch and likely impede attainment of favourable conservation status, particularly as the language is weaker than the existing Regulation 812 that has failed to adequately address bycatch and is to be repealed.*

## **Use of Acoustic Deterrent Devices**

*Amendment 61*

This amendment, which refers to the use of Acoustic Deterrent Devices for all marine mammal species, is not accurate, since they are only proven to reduce bycatch of harbour porpoises.

*ADDs are only proven to reduce bycatch of harbour porpoises, and not other species, so the language “to keep species such as marine mammals away from fishing gear” does not adequately reflect current knowledge. Alternative mitigation techniques, such as coloured float ropes along the top of a static net might be more effective at deterring dolphins and seals and language should allow for other mitigation options as technologies are developed and proved effective. A blanket presumption that ADDs work for all species might deter more innovative and effective solutions being developed.*

## **Recovery of bycaught sensitive species for research purposes**

*Amendment 79*

This amendment, as well as the Commission’s proposal, needs to be clarified. Recovery of live bycaught animals for rehabilitation is only appropriate for certain marine species for welfare reasons, and should not be permitted for cetaceans. However, animals that die during a bycatch event should be retained and landed for scientific investigations. Neither the PECH rapporteur’s report nor the Commission’s proposal requires logbook reporting

of live or dead bycatch of sensitive species, this is an essential component of monitoring bycatch. Amendments 459/460, 462 provide clearer text regarding recovery of bycaught sensitive species.

*Neither the Commission's proposal nor the PECH rapporteur's report makes it clear that only dead cetaceans should be recovered and solely for the purpose of scientific investigations. Live bycaught cetaceans should be released. All bycatch events should be reported in the logbook.*

#### **Amendment 80**

This amendment seeks to provide an exemption from the prohibition on deliberate capture, retention on board, transshipment or landing of marine mammals, marine reptiles or seabirds when caught for the purposes of scientific study.

*Such an exemption is inappropriate for animal welfare and conservation reasons; moreover this is contrary to the strict protection from deliberate disturbance, killing and injury provided to these species under Habitats and Birds Directives 92/43/EEC and 79/409/EEC.*

#### **Amendment 99**

This amendment seeks to provide an exemption on technical measures required on fishing operations conducted in the context of scientific investigations.

*Regardless of whether fishing operations are being conducted for scientific investigations or commercial purposes, safeguards to eliminate impacts on sensitive species are required.*

### **Monitoring and mitigation of bycatch**

#### **Article 12, Annexes V to XI, Part D**

Requirements relating to monitoring and mitigation of bycatch need to be strengthened (e.g. as per **AM467, 605-7, 635, 668, 677, 699, 708**), in line with the strict protection afforded to cetaceans under the Habitats Directive, and existing requirements under Regulation 812. Specifically there should be a mandatory obligation for Member States to put in place mitigation measures or restrictions on the use of certain gears in order to minimise and progressively eliminate bycatch of cetaceans and other sensitive species on the basis of best available scientific advice. For those gears known to have a high risk of cetacean bycatch (e.g. bottom set gillnet, driftnet, entangling net or high vertical opening trawl); it should be prohibited to deploy them without the use of proven mitigation technology.

Explicit requirements for annual Member State monitoring and reporting of bycatch to the Commission, alongside monitoring of the efficacy of mitigation are also needed, in order that mitigation can be adapted accordingly. Monitoring and mitigation should not focus on vessel sizes (currently >15 metre vessels for monitoring and >12 metres for mitigation – in some fisheries), but on gear type. Mitigation should not solely rely on acoustic deterrent devices, as these are not effective for all species; hence, where these do not result in reductions in bycatch, Member States should introduce additional or alternative mitigation methods based on scientific advice.

*Evidence shows that dedicated, scientifically robust monitoring and reporting is required to accurately understand bycatch levels and the conservation and welfare impacts; the most appropriate form of monitoring (e.g. dedicated independent observers, remote electronic monitoring) will vary according to vessel size and should be based on scientific advice. Given that populations cross national boundaries, it is vital that monitoring schemes are designed to be scientifically robust and coherent across Member States in order that data can be integrated to assess cumulative bycatch rates. Annual reporting to the Commission allows the data from all Member States to be reviewed annually by ICES to identify bycatch at an appropriate biogeographic scale in relation to population boundaries, rather than by individual Member States. Mitigation must likewise be based on scientific advice, assessed for efficacy and adapted accordingly.*

**Given these points, we have great concern that unless language is significantly strengthened so that it is fit for purpose, the repeal of Regulation 812/2004 and adoption of the technical conservation measures may result in even higher numbers of dolphins,**

porpoises and whales dying in fishing gear in European waters and will threaten the critically endangered harbour porpoise population in the Baltic Sea and harbour porpoise, bottlenose and common dolphin populations in South Western waters.

**Table 1. Cetacean bycatch in European waters by region**

Region	Evidence of cetacean bycatch
North Sea	Evidence of population level impacts on harbour porpoises as a result of bycatch in static nets in the Kattegat, North Sea and Skagerrak <sup>4</sup> , inner Danish waters <sup>5</sup> and Norwegian coastal waters <sup>6</sup> . Documented bycatch of minke whales and humpback whales in static creel gear, with likely population level impacts on humpback whales. <sup>7</sup>
North Western Waters	Evidence of population level impacts of bycatch on common dolphins in trawls <sup>8</sup> and harbour porpoises in static nets. <sup>9</sup> Documented bycatch, with insufficient monitoring to determine level of impacts, of: <ul style="list-style-type: none"> <li>- common and striped dolphins in static nets<sup>10</sup>, historic driftnet fleets<sup>11</sup> and in trawls;<sup>12</sup></li> <li>- pilot whales, white-beaked dolphins, white-sided dolphins and bottlenose dolphins in trawls;<sup>13</sup></li> <li>- minke whales in trammel nets;<sup>14</sup></li> <li>- minke whales and humpback whales in static creel gear;<sup>15</sup></li> <li>- Risso's dolphin in unknown fisheries.<sup>16</sup></li> </ul>
South Western Waters	Evidence of population level impacts on harbour porpoise as a result of bycatch in static gear in the Iberian Peninsula, <sup>17</sup> common dolphins in Portuguese waters <sup>18</sup> and bottlenose dolphins in Andalusia. <sup>19</sup> Documented bycatch, with insufficient monitoring to determine level of impacts, of: <ul style="list-style-type: none"> <li>- common and striped dolphins in static nets<sup>20</sup> and in trawls;<sup>21</sup></li> <li>- common dolphins in purse-seine nets;<sup>22</sup></li> <li>- Minke whale entanglement in static nets in the Azores and Canary Islands<sup>23</sup> and Bryde's whales.<sup>24</sup></li> </ul>
Baltic Sea	Evidence of population level impacts on the critically endangered and distinct population of harbour porpoises in static nets <sup>25</sup> and historically also in driftnets; more than 150 stranded harbour porpoises (out of a population less than 1,000) along the German Baltic shores with 47% regarded incidental catches or suspected incidental catches in 2007. <sup>26</sup>
Mediterranean Sea	Evidence of population level impacts from bycatch on: <ul style="list-style-type: none"> <li>- common and striped dolphins in static nets<sup>27</sup> and the historic driftnet fleet;<sup>28</sup></li> <li>- demographically isolated population of sperm whales in static and (illegal) drift nets.<sup>29</sup></li> </ul> Documented bycatch, with insufficient monitoring to determine level of impacts, of: <ul style="list-style-type: none"> <li>- bottlenose dolphins, Risso's dolphins, pilot whales, fin whales and minke whales in static nets;<sup>30</sup> and Risso's dolphins in long-lines;<sup>31</sup></li> <li>- long-finned pilot whales, and striped dolphins in drift-nets;<sup>32</sup></li> <li>- striped dolphin, common bottlenose dolphin, false killer whale, common dolphins, pilot whales and sperm whales in long lines;<sup>33</sup></li> <li>- beaked whales in illegal drift-nets.<sup>34</sup></li> </ul>
Black Sea	Evidence of population level impacts from bycatch in static nets on endangered harbour porpoises (a sub-species), bottlenose and common dolphins. <sup>35</sup> Documented bycatch, with insufficient monitoring to determine level of impacts, of harbour porpoises in the Sea of Azov. <sup>36</sup>
Outermost Regions	Documented bycatch of: <ul style="list-style-type: none"> <li>- Sotalia spp (Guiana dolphin and Tucuxi) strandings with net marks from French Guiana;<sup>37</sup></li> <li>- In Réunion: Risso's dolphins, false killer whales and short-finned pilot whales on longline and gamefish sport-fishery that uses troll-line and capture of Indo-Pacific bottlenose dolphin in beach-seine nets;<sup>38</sup></li> <li>- In Mayotte, Indo-Pacific bottlenose, spinner, spotted dolphin, melon-headed whales and short-finned pilot whales have been caught by net, hand line and longline;<sup>39</sup> humpback whales in gillnets.<sup>40</sup></li> </ul>

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